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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,845	01/12/2001	Pierre D. Grondin	PGI6044P0310US	1863

32116 7590 09/23/2005

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
500 W. MADISON STREET  
SUITE 3800  
CHICAGO, IL 60661

EXAMINER
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BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/759,845

Applicant(s)

GRONDIN ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Amendment submitted on August 25, 2005, has been entered. Claim 2 has been cancelled. Therefore, the pending claims are 1 and 3 - 13.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1 and 3 – 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McAmish et al. (6,191,221) in view of Ferrar et al. (EP 0 570 215 A2) for the reasons of record.

4. Claims 1 and 3 – 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrar et al. in view of Ray et al. (5,762,643) for the reasons of record.

### ***Response to Arguments***

5. Applicant's arguments filed August 25, 2005 have been fully considered but they are not persuasive. With regards to the applicant's arguments that McAmish et al. fails to teach the claimed basis weight of the spunbond fabric (response, pages 5 – 6), it is noted that the rejection is based on the combination of McAmish et al. and Ferrar et al. which combined teach the claimed range as set forth in the previous Office Action.

6. Additionally, the applicant argues that the claimed invention has unexpected results due to the use of the claimed polymer viscosity range which is not addressed by the prior art and would not have been obvious to one of ordinary skill (response, pages 6 – 9). As set forth in the previous Office Action, the results provided in the disclosure are not sufficient to show that the improved properties of the claimed product are related to the viscosity of the polymer and not to

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other factors such as processing conditions. Nor do these results show that the improvement of properties is actually unexpected. There is nothing on record that shows it is unobvious or unknown to one of ordinary skill in the art that the change in viscosity of the polymer would not produce a nonwoven product with improved properties since the polymer would have better flow and processing characteristics. Finally, the applicant has failed to address any of the Examiner's arguments with regards to the deficiencies in the evidence of the disclosure. Until those issues are sufficiently addressed the evidence will not be sufficient to show unexpected results.

Further, applicant's acknowledgement that "those skilled in the art *will readily appreciate* that processing conditions must frequently be selected depending upon the characteristics of the polymer" (response, page 7) is further evidence that it would be known to one of ordinary skill in the art how to choose or optimize the properties of the finished product by controlling the processing conditions. Hence, applicant's improvements *are* obvious to those with skill in the art and *would not* be unexpected. If it is not obvious to one of skill in the art how to choose the processing conditions to produce the desired properties, then the applicant's own disclosure would be lacking a sufficient teaching to one of ordinary skill in the art how to make the claimed product, since the disclosure is limited in the teachings related to the processing conditions desired to produce the claimed product with the desired properties. It cannot be both well known to one of ordinary skill in the art how to control the processing conditions based on the polymer material and the desired properties of the end product, while at the same time being completely unexpected to those with skill in the art that controlling said processing conditions and polymer material will produce or improve the claimed properties. The applicant has shown no evidence

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that the claimed product is anything more the optimizing or choosing known methods and materials to produce a known end product. Therefore, the rejections are maintained.

***Conclusion***

7. This is a continued examination of applicant's earlier Application No. 09/759,845. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

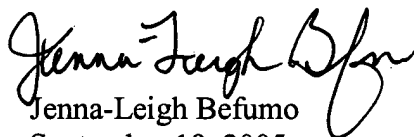
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

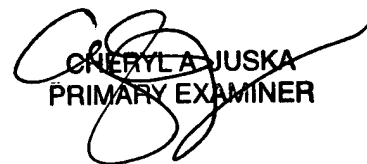
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jenna-Leigh Befumo  
September 19, 2005

  
CHERYL A. JUSKA  
PRIMARY EXAMINER